IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL Nos. 1157 of 1997, 1158 of 1997 and 961 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PARBATBHAI POPATBHAI ZALA

Appearance:

1. Criminal Appeal Nos. 1157 of 1997 & 1158 of 1997
MR. I.M. PANDYA, APP, for Petitioner No. 1
Respondent No. 1-5 served

2. Criminal Appeal No. 961 of 1997
MR. B.S. PATEL, ADVOCATE for the appellants
MR. I.M. PANDYA, APP, for the Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 18/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

These three appeals arise out of the judgement and order of conviction dated 30.9.1997 passed in Sessions Case No. 195 of 1992 by the learned Additional Sessions Judge, Kheda at Nadiad . The learned trial judge by the said judgement convicted all the accused for the offence punishable under Section 323, 304 Part II read with Section 34 of the I.P.C. and under Section 135 of the Bombay Police Act.

2. Accused No. 1 Parbatbhai Popatbhai Zala was sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1000/- and in default to undergo simple imprisonment for one month.

2.1 Accused No. 2 Shanabhai Popatbhai Zala, accused No. 4 Jawanbhai Punjabhai Zala, accused No. 5 Poonambhai Punjabhai Zala were sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 500/and in default to undergo 15 days' simple imprisonment.

2.2 Accused No. 3 Punjabhai Mathurdas Zala was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 200/- and in default to further undergo 7 days' simple imprisonment.

2.3 For the offence punishable under Section 135 of the Bombay Police act, all the accused were sentenced to suffer simple imprisonment for one month.

2.4 The learned trial judge also ordered the sentence to run concurrently. All the accused are acquitted for the offence punishable under Sections 147, 148, 149 and 504 of the I.P.C.

2.5 State of Gujarat has filed Criminal Appeal No. 1157 of 1997 for enhancement of sentence. Criminal Appeal No. 1158 of 1997 has been filed by the State of Gujarat challenging the order of acquittal for the offence punishable under Section 302, 147, 148,149 and 504 of the I.P.C.

2.6 The accused have filed Criminal Appeal No. 961 of 1997 wherein they have challenged the order of conviction and sentence passed against them.

2.7 All the appeals are therefore heard together and are disposed of by this common judgement.

3. The short facts giving rise to these appeals are as under:

3.1 As per the prosecution case on 15.4.1992 at about 9.30 a.m. the deceased Rataji Kupajee was cutting tree in his agricultural land. At that time five accused whose field is adjacent to the field of the deceased came there with weapons. The accused picking up quarrel with the deceased by asking as to why he is cutting the tree which is in their field. When deceased disputed the assertion of the accused, accused No. 1 inflicted dharia blow on the head of the deceased. Accused Nos. 2 to 5 also gave stick blows on the deceased. The deceased sustained serious injuries. The daughter of the deceased who was also working there in the agricultural land also sustained stick injuries. The deceased was taken to Civil Hospital, Ahmedabad, where he was succumbed to injuries.

3.2 Chandaben, wife of the deceased Rataji Kupajee, gave complaint on 15.4.1992 to the constable on duty at the Civil Hospital, Ahmedabad. In turn the complaint was forwarded to the Police Station Officer, Mehmadabad who recorded the complaint on 18.4.1992. Panchnama was drawn on the place of incident. The police after making necessary investigation filed charge-sheet against all the accused under Sections 302, 147, 148, 149,323, 504 of the I.P.C. and under Section 135 of the Bombay Police Act in the Court of the learned Judicial Magistrate First Class, Mehmadabad who in turn committed the case to Sessions Court at Nadiad.

3.3 Charge Exh. 37 was framed against the accused. The accused pleaded not guilty to the charges. The defence of the accused was total denial.

3.4 The learned trial judge after appreciating the evidence on record passed judgement and order of conviction and sentence as stated in the earlier part of the judgement.

3.5 Learned advocate Mr. B.S. Patel appearing on behalf of the accused submits that the accused have been falsely involved in the case. In the submission of Mr. Patel the evidence of the eye witnesses Dahyabhai and Shardaben Rataji is not reliable. According to Mr. Patel, their evidence runs counter to the medical evidence as Dr. Desai who performed post-mortem of the deceased has clearly deposed that the injury sustained by the deceased was with hard and blunt substance and dharia

cannot be considered as such weapon. Mr. Patel submits that as the incident had taken place on 15.4.1992 and F.I.R. was filed on 18.4.1992, the possibility of false implication of the accused cannot be ruled out.

4. The learned A.P.P. Mr. I.M. Pandya, on the other hand, submitted that the prosecution has established the charge under Section 302 of I.P.C. beyond reasonable doubt. He has submitted that the three eye witnesses Chandaben Exh. 14, Dahyabhai Exh. 32 and Shardaben Exh. 34 who is also an injured witness, clearly involved all the accused. Mr. Pandya submits that Dr. Kalpesh Shah Exh. 22 who performed post-mortem of the deceased also corroborates the evidence of the eye witnesses and therefore in the submission of the learned A.P.P. Mr. Pandya, the appeals preferred by the State for enhancement of sentence and challenging the order of acquittal are required to be allowed.

5. The prosecution in order to bring home the charge has mainly placed reliance on the evidence of Shardaben the daughter of the deceased, PW-9, Exh. 34; Chandaben, the complainant and wife of the deceased Rataji Kupajee, PW-1, Exh. 14; and Dahyabhai, son of the deceased, PW-8, Exh. 32.

6. Chandaben, complainant and wife of the deceased, PW-1, Exh. 14, in her evidence has stated that on the day of the incident at about 9.00 a.m. her husband was cutting the tree on the boundary of their field. Her son and daughter were also there with the deceased. At that time five accused came with weapons like dharia and sticks. Accused No. 1 Parbatbhai Popatbhai Zala (hereinafter referred to as "A-1") started quarrel by asking the deceased why he is cutting their trees. When the deceased replied that the tree belonged to him, A-1 inflicted dharia blow on the head of the deceased. Accused No. 2 Shanabhai Popatbhai Zala (A-2) also gave stick blow on the left hand of the deceased. Accused No. 4 Jawanbhai Punjabhai Zala (A-4) and accused No. 5 Poonambhai Punjabhai Zala (A-5) gave stick blow on the back portion of Shardaben, daughter of the deceased. At that time Kamlaben, Raijibhai, Dahyabhai Dulabhai and Harkaben Dahyabhai of neighbouring fields came there and took the injured to hospital initially at Haldarvas Govt. Dispensary where some treatment was given and thereafter the deceased was removed to Civil Hospital, Ahmedabad, where he died on 17.4.1992. The complainant Chandaben had given the complaint on 15.4.1992 to the constable, Niranjan Vyas, on duty, at Civil Hospital. Dr. Pravinbhai Desai, Medical Officer of Haldarvas Community

Health Centre who has treated the deceased is examined as PW-5, Exh. 25. He has stated that the injury sustained by the deceased on the head can be caused with hard and blunt substance and the same is possible with the blunt portion of dharia and other injuries are possible with sticks. In the cross-examination suggestion is put to him that the injuries sustained by the deceased are possible because of fall from the tree, which is denied by Dr. Desai. Thus the evidence of the complainant Chandaben gets corroborated from the evidence of Dr. Desai.

7. Medical Certificate Exh. 26 issued by Dr. Desai shows that the deceased sustained two injuries, namely (1) C.L.W. on (Lt) parital region 5 c.m. long X 1 c.m. deep and (2) fracture of (Lt.) humerus bone at Mid point & swelling and defernity present. Dr. Vinodkumar Lajjaram of Civil Hospital, Ahmedabad, Exh. 47, is also of the opinion that the injuries sustained by the deceased are possible with hard and blunt substance. According to the Dr. Lajjaram those injuries are not possible of sharp portion of muddamal dharia. Merely because the complainant has not stated in her evidence as to which portion of the dharia was inflicted on the head of the deceased, considering the medical evidence on record, we are of the view that the blunt portion of the dharia was used. Considering the internal injuries sustained by the deceased, from the post-mortem report wherein the deceased had depressed fracture and linear oblique fissured fracture on the head which can only be possible with use of blunt substance, we are of the opinion that there is no inconsistency in the evidence of the complainant and the Medical Officers.

8. Besides the evidence of the complainant Chandaben, Dahyabhai and Shardaben were also present and they have also in their evidence and corroborated the say of the complainant. According to them A-1 gave dharia blow on the head of the deceased and accused No. 2 gave stick blow on the deceased. They also showed presence of all the accused with sticks. Accused No. 4 and 5 have given stick blows on Shardaben. Dr. Dilip Desai, Medical Officer of Community Health Centre, Haldarvas, who also examined Shardaben and has found that she was having a bone tenderness on the backside. Dr. Desai has issued certificate Exh. 27 with respect to the injuries sustained by Shardaben. Thus, from the evidence of these witnesses the presence of all the accused and part played by them is established. There is no reason for us to discard their evidences. The prosecution, in our opinion, has established that accused No. 1 has caused

dharia blow on the head of the deceased and accused No. 2 has given stick blow on the deceased and accused No. 4 and 5 have inflicted stick blows on the back portion of Sharda.

9. Certain contradictions have been pointed out by Mr. Patel, learned counsel for the accused as far as the evidence of these witnesses. However, in our opinion those contradictions are too minors and will not affect the credibility of these witnesses.

10. In view of the above discussion, we hold that the prosecution has established presence of all the accused and the part played by the accused in causing injuries to the deceased as well as injured Sharda.

11. The next question arises for our consideration is as to for which offence, the accused can be convicted. Admittedly, the incident in question has taken place on a very trivial matter when the accused initiated quarrel of the cutting of the tree. Merely because accused No. 1 had come with dharia and other accused were having sticks by that itself, it cannot be concluded that the accused had come with an intention to commit murder. The accused are also agriculturists and therefore possessing dharia and sticks also appear to be natural on their part. The incident in question had happened all of a sudden inasmuch as when the accused saw the deceased cutting tree which is situated on the boundary of the fields of the accused as well as deceased. Besides, the accused have given one blow and that too with blunt portion of the dharia on the head of the deceased. Even though the witnesses have kept mum regarding exchange of heated words and the quarrel having taken place between the accused and the deceased, it cannot be out of place to state that there must have been some altercation before A-1 inflicting dharia blow on the head of the deceased. Thus, taking into consideration the facts, we are of the opinion that the accused cannot be convicted for the offences punishable under Sections 302, 147, 148, 149, and 504 of the I.P.C. The learned trial Judge has rightly acquitted the accused for the said offences. In our opinion, all the accused at the most can be convicted for the offences punishable under Section 323, 304 Part II read with Section 34 of the I.P.C. Accordingly, all the accused are convicted for the offences punishable under Section 323, 304 Part II read with Section 34 of the I.P.C.

12. At this stage Mr. B.S. Patel, learned advocate for the accused submits that as far as accused No. 1

Parbatbhai Popatbhai Zala is concerned, he has already undergone the sentence of 5 years' rigorous imprisonment ordered by the learned trial judge. As far as accused Nos. 2 to 5, namely, Shanabhai Popatbhai Zala, Punjabhai Mathurbhai Zala, Jawanbhai Punjabhai Zala and Poonambhai Punjabhai Zala, are concerned, they are already out on bail. He submits that if they are ordered to undergo the rest of the sentence, it will be too harsh to them especially when they have already settled in their life and at present there is no dispute with the complainant's side. Considering the facts and circumstances of the case and more particularly the PWs have lost their bread-earner of the family, we feel that the complainant is required to be compensated reasonably. We accordingly direct that accused Nos. 2 to 5 shall undergo the sentence imposed by the learned trial judge or to pay fine of Rs. 3000/- each over and above the fine paid by them. If the accused Nos. 2 to 5 decide to pay fine instead of completing the rest of the terms of jail, the fine amount shall be paid to the complainant Chandaben, wife of the deceased Rataji Kupajee after proper verification. The bail bond of the accused shall stand cancelled after eight weeks to enable them to deposit the amount of fine.

Subject to the modification of sentence, Criminal Appeal No. 961 of 1997 filed by the appellants accused is partly allowed. Criminal Appeal Nos. 1157 of 1997 and 1158 of 1998 filed by the State are dismissed.

(K.R. VYAS, J)

(K.M. MEHTA, J)

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